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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL
FILE

In the Matter of)
)
Amendment to Section 1.773)
of the Commission's Rules)
Regarding Pleading Cycle) CC Docket No. 92-117
for Petitions Against)
Tariff Filings Made on)
14 Days' Notice)

COMMENTS

U S WEST Communications, Inc. ("U S WEST"),¹ through counsel and in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking² in the above-captioned proceeding, hereby files its comments on the Commission's proposals.

I. INTRODUCTION

In its NPRM, the Commission proposed to reduce to six calendar days the time allowed to file petitions seeking investigation, suspension or rejection of tariff filings made on 14-days' notice and to reduce the period for replies to three

¹U S WEST is a common carrier provider of exchange access and exchange telecommunications services.

²Amendment to Section 1.773 of the Commission's Rules Regarding Pleading Cycle for Petitions Against Tariff Filings Made on 14 Days' Notice, Notice of Proposed Rulemaking, 7 FCC Rcd. 3386 (1992) ("NPRM").

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calendar days.³ This will allow the Commission time to consider arguments opposing 14-day tariff filings prior to the effective date of any such tariffs. The Commission also proposes to require that all petitions and replies be personally served because of the short pleading cycle.⁴ The Commission also seeks comment on whether service by facsimile should be allowed.⁵

With few exceptions, U S WEST agrees that the Commission's proposed changes to Section 1.773 will serve the public interest. These changes will allow the Commission time to consider oppositions to 14-day tariff filings without unnecessarily delaying the effective dates of such filings. In the comments which follow, U S WEST addresses the few concerns that it has with the Commission's proposed rule changes.

II. INTERVENING HOLIDAYS SHOULD NOT BE COUNTED IN CALCULATING THE THREE-DAY PERIOD FOR REPLIES

While U S WEST does not object to a reduction in the amount of time allowed for a tariff reply, the Commission's proposal effectively cuts the time for a reply in half, from six days to three days when a weekend is involved.⁶ Conversely, the Commission's proposed change will only reduce the amount of time

³Id. ¶¶ 1, 4 and at 3387 ¶ 6.

⁴Id. at 3387 ¶¶ 5-6.

⁵Id.

⁶Section 1.773(b)(1)(i) currently allows four days for a tariff reply and intermediate holidays are not counted. See 47 C.F.R. § 1.773(b)(1)(i) and (b)(2).

allowed for filing petitions opposing a tariff from seven calendar days to six calendar days.⁷ The Commission's proposal on reply periods, if adopted, will only allow carriers one business day to prepare and file a tariff reply when a weekend is involved. This is too short a time -- it is not reasonable to expect U S WEST or any party filing tariffs to be able to gather relevant information and draft a reply in a single business day.

A more reasonable approach would be to allow three days for replies, excluding intervening holidays. This still would allow two days for Commission consideration of opposing arguments and rebuttals. If the Commission finds this to be an insufficient period of time, U S WEST offers two other alternatives for consideration:

- Allow six calendar days for petitions and four calendar days for replies.
- Allow five calendar days for petitions and four calendar days for replies.

Both of these alternatives allow carriers a minimum of two business days to respond to oppositions when the tariff reply period includes a weekend. While U S WEST favors excluding intervening holidays from the proposed three-day reply period, any of the above alternatives represent a more reasonable approach than the NPRM's proposed three calendar day rule.

⁷See 47 C.F.R. § 1.773(a)(2)(i).

III. PERSONAL SERVICE OF PETITIONS SHOULD BE REQUIRED ON CARRIERS WITH OFFICES OR DESIGNATED REPRESENTATIVES IN WASHINGTON, D.C.

U S WEST agrees with the Commission's conclusion that petitioners should personally service carriers that have filed tariffs on 14 days' notice.⁸ The only caveat that U S WEST would place on this requirement is that personal service be limited to carriers with Washington, D.C. offices or designated representatives. An open-ended requirement for personal service could be unduly burdensome for petitioners serving carriers with no presence in Washington, D.C. In such cases, service by facsimile with a follow-up mailing of the pleading is a less burdensome and more reasonable approach.

IV. NO PURPOSE WOULD BE SERVED BY REQUIRING PERSONAL SERVICE OF TARIFF REPLIES

The Commission also proposes to require personal service of replies upon petitioners.⁹ The Commission should modify its proposal and continue to allow carriers the option to serve petitioners by mail. With this modification, replies would still have to be filed with the Commission on the due date. This proposed modification would have no impact on the time allotted for the Commission to consider oppositions and replies, or to draft an order. The only effect would be that petitioners would encounter a slight delay in receiving a copy of a carrier's

⁸NPRM, 7 FCC Rcd. at 3387 ¶¶ 5-6.

⁹Id.

reply. This should not present a problem since the Commission's rules do not allow petitioners to file a surrebuttal in a tariff proceeding.

However, if the Commission does determine that personal service of tariff replies is necessary, it should limit personal service to those petitioners with a presence in Washington, D.C. (i.e., either an office or a designated representative) and allow other petitioners to be served by facsimile with a follow-up mailing of the pleading.

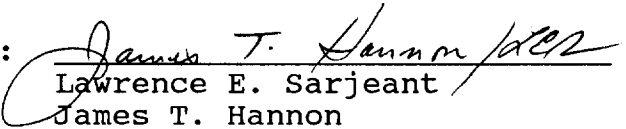
V. CONCLUSION

As the foregoing demonstrates, U S WEST agrees that the Commission's rules governing the pleading cycle for tariff filings made on 14 days' notice should be changed. U S WEST urges the Commission to modify its NPRM as described in the above comments. These modifications should allow the Commission to achieve its goals in the least burdensome manner.

Respectfully submitted,

U S WEST Communications, Inc.

By:

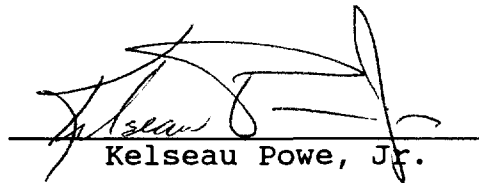

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CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify on this 23rd day of July, 1992, that I have caused a copy of the foregoing **COMMENTS** to be hand delivered to the persons named on the attached service list.


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